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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/167535

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 24, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 11, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency properly denied coverage of lodging and meals for the Petitioner as part of Petitioner's non-emergency medical transportation (NEMT) trips to [REDACTED].

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Tip Pom

Division of Health Care Access and Accountability

Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County. Petitioner lives with his family.

2. Petitioner's diagnoses include spastic quadriplegic cerebral palsy, chronic intestinal pseudo-obstruction, autonomic dysregulation, seizure activity and chronic pain issues. He also has issues with airway obstruction due to copious secretions and inability to swallow effectively, requiring frequent suctioning. Due to dysautonomia and developmental delays, Petitioner is at risk for sudden cardiac and pulmonary events.
3. Petitioner has regular appointments at [REDACTED]. Petitioner's physician has, since 2011, recommended that the Petitioner travel to [REDACTED] the night prior to appointments to allow the Petitioner to stabilize prior to his multitude of appointments.
4. Prior to March, 2015, the agency reimbursed the Petitioner for meals and lodging related to his trips to [REDACTED].
5. On May 13, 2015, MTM issued a letter to the Petitioner informing the Petitioner that the request for reimbursement of meals and lodging was denied.
6. On August 7, 2015, the agency issued a letter to the Petitioner informing the Petitioner that it would continue to provide NEMT to the Petitioner but it would no longer reimburse the Petitioner for meals and lodging because the trip did not meet the minimum mileage requirements for reimbursement of those items.

### DISCUSSION

Non-emergency medical transportation (NEMT) is a covered service for MA recipients who are unable to provide their own transportation based on their medical needs. Wis. Admin. Code § 107.23. Effective August 1, 2013, Medical Transportation Management (MTM) became the contracted non-emergency medical transportation manager for the Department of Health Services.

In June, 2013, ForwardHealth Update No. 2013-32 was issued to members with information about MTM and non-emergency medical transportation. The Update notes the following:

“As the DHS transportation manager, MTM arranges and pays for rides to covered MA services for members who have no other way to receive a ride. Rides can include public transportation, rides in specialized medical vehicles or rides in other types of vehicles depending on a member's medical and transportation needs. . .

If you are eligible to get a ride through MTM Inc. to your appointment, MTM Inc. is required by federal law to give you the least costly type of ride to get to your appointment based on your medical and transportation needs. . .

MTM works with providers to ensure members receive the most appropriate and cost-effective mode of transportation. . .

MTM is required to schedule the least costly type of ride that meets the member's medical and transportation needs per 42 CFR 447.200. . .”

Other relevant portions of the Update for purposes of this hearing include the following:

“If you get a ride through MTM Inc. and meet one of the following rules set up by Wisconsin Medicaid and BadgerCare Plus, you may be paid for your meals or get an overnight stay during your trip:

- You may be paid for one meal if you are traveling at least 100 miles one way to your appointment, and you are away for at least four hours
- You may be paid for two meals if you are traveling at least 100 miles one way to your appointment and you are away for at least eight hours

- You may be paid for two meals and get one overnight stay if you are traveling at least 200 miles one way to your appointment, and you are away for at least eight hours. . .

An approved, medically required escort may get paid for the same meals and get the same overnight stays that you are allowed. . .”

In addition to the ForwardHealth Update, Medicaid/BadgerCare Plus Handbook Topic #13637 addresses the issue of meals and lodging reimbursement. It contains the same language as the above-stated language in the ForwardHealth Update.

In a case involving the denial of a service that was previously approved, the burden is on the agency to demonstrate that it properly denied the service.

In this case, the agency asserts that because the mileage from the Petitioner’s home to [REDACTED] is 95.42 miles, the Petitioner and his parents are not entitled to meal and lodging reimbursement. The only evidence produced by the agency to support its assertion regarding the mileage is a screen shot from MTM which states: “1 Way Distance: 95.42 Miles”. The agency did not provide evidence to demonstrate that this actually pertains to this Petitioner (no name on the screen shot to indicate that this is actually the mileage for the Petitioner’s case). There is no evidence to demonstrate that this screen shot represents a measurement of the distance between the Petitioner’s home and [REDACTED] (no addresses provided). There is no evidence to demonstrate the route that this mileage represents and whether it is the shortest or fastest route between the two points. In fact, I take judicial notice that I could not replicate the agency’s mileage on Google Maps or on Mapquest. According to Mapquest, the shortest distance (but not the fastest route) is 100.06 miles and the fastest route is 115.38 miles. According to Google Maps, the shortest distance (and fastest route) is 101 miles. This indicates that mileage calculation is not an exact science and in a case such as this, where the burden is on the agency and where the mileage is close to the threshold for reimbursement, the agency must produce evidence that properly supports its position.

At the hearing, the Petitioner’s mother asserted a medical exception to the meal and lodging reimbursement rules based on the statements of Petitioner’s physician that an overnight stay is required to stabilize the Petitioner. The Petitioner’s mother was unable to cite any rule for this exception. The agency argues that there is no such exception and I was unable to find one. As an administrative law judge, I am bound to apply the rules that are written and have no equitable authority. Therefore, without evidence of a medical exception or allowance in the law, I cannot apply it.

With regard to meal reimbursement, I conclude that the agency did not properly deny reimbursement of meals to the Petitioner and any approved medically required escorts. The agency did not establish and the evidence does not support the agency’s position that the route between the Petitioner’s home and [REDACTED] is less than 100 miles. Therefore, according to MA policy, the Petitioner and approved medically required escorts are entitled to meal reimbursement.

With regard to lodging reimbursement, I conclude that the agency properly denied reimbursement of lodging to the Petitioner and any approved medically required escorts based on MA policy and rules. Though the evidence regarding the distance between the Petitioner’s home and [REDACTED] is not specific, it is clear that it is not 200 miles or more between Little Chute, Wisconsin and [REDACTED] in Wauwatosa, Wisconsin. Therefore, I must apply the policy and find that the Petitioner is not entitled to reimbursement for lodging.

### CONCLUSIONS OF LAW

The agency did not properly deny meal reimbursement to the Petitioner and his approved medically required escorts.

The agency properly denied lodging reimbursement to the Petitioner.

**THEREFORE, it is**

### ORDERED

That with respect to the agency denial of meal reimbursement, this matter is remanded to the agency to take all administrative steps necessary to reimburse the Petitioner for claims for meal reimbursement retroactive to March, 2015. This action shall be completed within 10 days of the date of this decision.

That with respect to the agency denial of lodging reimbursement, the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of October, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 16, 2015.

Division of Health Care Access and Accountability  
[Soktheap.Pom@dhs.wisconsin.gov](mailto:Soktheap.Pom@dhs.wisconsin.gov)